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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations
(Athens and Doraville, GA)

)
)
)
) MB Docket No. 03-190
) RM-10738
)
)

COMMENTS OF INFINITY BROADCASTING CORPORATION

ORIGINAL

October 27, 2003

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EXECUTIVE SUMMARY

Infinity Broadcasting Corporation opposes the Petition for Rule Making of Cox Radio, Inc. and CXR Holdings, Inc., which preceded the Commission's NPRM in this proceeding. Cox's proposal in its Petition is to allot a new community of license, Doraville, Georgia, for Cox station WBTS(FM), which is currently licensed to Athens, GA. The Cox Petition is a clear attempt to complete the first step of a two-step move-in for WBTS to achieve better coverage of metropolitan Atlanta area and to abandon the less densely-populated Athens.

Cox is a media powerhouse in Atlanta. Station WBTS(FM) is part of a concentrated cluster of newspaper, television and radio assets controlled by Cox and its affiliates in the Atlanta area, which, together, dominate the Atlanta media market. Cox affiliates own Atlanta's daily newspapers, Atlanta's ABC-affiliated television station, and a five-station radio cluster in the Atlanta area. Most of these holdings are grandfathered combinations that would otherwise violate the Commission's newspaper/broadcast cross-ownership rule.

Consistent with Cox's Atlanta-based focus, after acquiring WBTS in 1999, Cox located the WBTS transmitter site as far to the west as possible to maximize coverage of Atlanta and its eastern suburbs, while still barely meeting the Commission's community of license coverage requirements for Athens, GA. Cox markets WBTS to serve Atlanta, despite WBTS's status as an Athens-licensed station. WBTS uses the slogan "95.5 The Beat of Atlanta. Atlanta's new #1 hit music station," and WBTS's marketing materials for advertisers focus on Atlanta and its suburbs. The Station's current focus on Atlanta, together with Doraville's close proximity to Atlanta, indicate that the only possible purpose for Cox's proposal to change the Station's city of license is to remove the Station's tether to Athens, some 60 miles east of Atlanta. By selecting Doraville, an Atlanta suburb of 9,862, as the Station's community of

license, Cox will eventually be poised to move the Station transmitter site further west to a place where it can, at last, provide full signal coverage of Atlanta.

In addition, by proposing only the first step of the WBTS move-in to Atlanta in the Petition, and remaining silent as to its intentions for a second-step transmitter site move, Cox has avoided (i) the Commission's rule against creating new short spaced allotments, (ii) the requirement to provide the Commission with a gain/loss showing in its Petition, and (iii) the need for a waiver of the existing newspaper/broadcast ownership rule to accomplish the WBTS move-in. This latter point is especially important as Cox did not request and did not receive a waiver of the newspaper/broadcast ownership rule when it acquired the Station, and the Commission should not allow Cox to circumvent that requirement now.

Cox claims that its proposed amendment to the FM Table of Allotments will provide first local service to Doraville, Georgia. The Commission has repeatedly stated, however, that it will not blindly apply the first local service preference of the FM allotment priorities when a station seeks to reallocate a channel from a rural community to a suburban community of a nearby urban area, and, thus, the Commission must view Cox's proposal skeptically.

Moreover, Doraville is not entitled to a first local service allotment preference because Cox's Petition fails to demonstrate that Doraville, which falls wholly within the Atlanta Urbanized Area, is independent from Atlanta. In fact, the population of Doraville is less than 1% of the population of Fulton and DeKalb Counties, and Doraville is essentially contiguous to and an integral part of Atlanta. Contrary to Cox's attempt to describe Doraville as an independent community that provides its residents an extensive variety of municipal services, Doraville is heavily dependent upon DeKalb County for these services.

Thus, the Commission must review Cox's proposal under allotment priority 4, other public interest matters. Cox's proposal to reallocate WBTS will harm Athens, GA, which is an important Georgia city with a population in excess of 100,000. Yet, without WBTS, Athens will retain *only one* commercial FM allotment, three commercial AM stations and three non-commercial FM stations. By contrast, Atlanta alone (without counting allotments and assignments to suburban communities, which would likely double the total) has a total of 23 aural transmission services.

The attached Technical Study also demonstrates that relocating the WBTS transmitter closer to Atlanta, as appears to be Cox's design, will result in loss of reception service to communities to the east and north of Athens. These rural communities are currently served by as few as 8 aural services. In comparison, communities in the gain area are already well served by as many as 44 reception services.

In short, the public interest factors weigh overwhelmingly in favor of dismissing Cox's proposal for WBTS and retaining the existing allotments for Athens, GA. Reallocating WBTS away from Athens to the Atlanta suburbs would leave the important city of Athens and nearby rural areas further underserved by transmission and reception services, while adding to an embarrassment of riches in and around Atlanta.

Cox states repeatedly throughout its Petition that the proposed change in community to Doraville will be made at the existing WBTS transmitter site. Thus, if, despite the fact and arguments set forth in these Comments, the Commission decides to grant Cox's proposal to reallocate WBTS to Doraville, then the Commission should condition WBTS's license on WBTS continuing to provide city grade coverage to the community of Athens and on the WBTS programming continuing to meet the needs and interests of Athens residents.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b))	
Table of Allotments,)	MB Docket No. 03-190
FM Broadcast Stations)	RM-10738
(Athens and Doraville, GA))	
)	

COMMENTS OF INFINITY BROADCASTING CORPORATION

Infinity Broadcasting Corporation ("Infinity"), parent company of the licensees of WVEE(FM), WZGC(FM) and WAOK(AM), Atlanta, GA, hereby comments on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding¹ ("NPRM") and opposes the Petition for Rule Making of Cox Radio, Inc. and CXR Holdings, Inc. (collectively referred to herein as "Cox")² to amend the FM Table of Allotments, which preceded the NPRM. Cox's Petition and the NPRM propose a new community of license, Doraville, Georgia, for Cox station WBTS(FM) (the "Station"), which is currently licensed to Athens, GA. Doraville is a suburb less than 15 miles outside the city limits of Atlanta and is wholly within the Atlanta Urbanized Area, while Athens is more than 60 miles from Atlanta and is within its own designated Urbanized Area.

The Cox Petition is a clear attempt to complete the first step of a two-step move-in for WBTS to achieve better coverage of the more populous, and consequently more profitable,

¹ *In the Matter of Amendment of Section 73.202(b), FM Table of Allotments, FM Broadcast Stations (Athens and Doraville, Georgia), Notice of Proposed Rulemaking, DA 03-2714 (rel. Sept. 5, 2003) ("NPRM").*

² *Petition for Rule Making of Cox Radio, Inc. and CXR Holdings, Inc. filed in MB Docket No. 03-190, RM-10738 on May 9, 2003 ("Petition").*

Atlanta radio market and to abandon the less densely-populated Athens. Accordingly, Doraville should not be entitled to a first local service preference under the Commission's FM allotment priorities. Instead, the Commission's allotment priority 4 policies weigh overwhelmingly in favor of dismissing Cox's proposal for WBTS and retaining the existing allotments for Athens, GA. Alternatively, the Commission should condition the adoption of Cox's proposal on on WBTS continuing to provide city grade coverage to the community of Athens and on the WBTS programming continuing to meet the needs and interests of Athens residents.

I. COX IS A MEDIA POWERHOUSE IN ATLANTA

Station WBTS(FM) is part of a concentrated cluster of newspaper, television and radio assets controlled by Cox and its affiliates in the Atlanta area, which, together, dominate the Atlanta media market. Cox affiliates own Atlanta's daily newspapers, the Atlanta Constitution and the Atlanta Journal, and Atlanta's ABC-affiliated, VHF television station, WSB-TV, Atlanta, GA. In addition, Cox's five-station radio cluster in the Atlanta area includes two heritage stations licensed to Atlanta, 50 kW clear channel AM, WSB(AM), Atlanta, GA and Class C FM WSB-FM, Atlanta, GA. Cox's control of the dominant Atlanta newspapers and the legacy WSB television and radio assets is a grandfathered combination³ that would otherwise violate the Commission's newspaper/broadcast cross-ownership rule.

In the late 1990's Cox added three stations to its Atlanta-area radio cluster, but was prevented by the newspaper/broadcast cross-ownership prohibition from acquiring radio stations licensed to Atlanta. Instead, Cox acquired stations licensed to other communities that provided good coverage of the city of Atlanta. In 1997, Cox acquired WALR(FM), licensed to LaGrange, GA, which is more than 60 miles southwest of Atlanta. In 1999, Cox acquired

³ See *NewCity Communications of Massachusetts, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 4985, 4985 n. 5 (1995).

WBTS(FM), licensed to Athens, GA, which is more than 60 miles east-northeast of Atlanta. And, in 2000, Cox acquired WFOX(FM), licensed to Gainesville, GA, which is 50 miles northeast of Atlanta. The service contours of both WALR and WFOX encompass all of Atlanta, so Cox acquired WALR and WFOX pursuant to *temporary* waivers of the newspaper/broadcast cross-ownership rule. The temporary waivers were premised on Cox's showing that the waivers were in each case necessary to effectuate a larger transaction.⁴ Cox was able to acquire WBTS without a waiver because the WBTS service contour encompasses a significant portion, but not all, of the city of Atlanta.

Cox's clear focus for these stations is to serve Atlanta, not the smaller, but still substantial and significant, communities to which the stations are licensed. For example, within two months of acquiring WBTS in 1999, Cox completed a transmitter site change and one-step downgrade for the Station, which took the Station from a full Class C facility to a Class C1 and moved its transmitter from a site about 10 miles north-northeast of Athens to a site nearly 30 miles to the west-southwest, directly toward Atlanta. Indeed, as shown in the attached Technical Statement,⁵ the WBTS transmitter site is currently located as far to the west as possible to maximize coverage of Atlanta and its eastern suburbs, while still barely meeting the Commission's community of license coverage requirements for WBTS's community of license,

⁴ *NewCity Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd. 3929, 3932-33 (1997) (WALR(FM), then known as WJSF(FM)); *Chancellor Media/Shamrock Radio License, L.L.C.*, Memorandum Opinion and Order, 15 FCC Rcd 17053, 17056 (2000). The Commission had rejected a previous attempt by Cox to reduce the contour of WALR to acquire the station without a cross-ownership waiver. See *NewCity Communications of Massachusetts, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 4985, 4990 (1995), *aff'd sub nom, WSB-TV, Inc. v FCC*, 85 F.3d 695 (D.C. Cir. 1996).

⁵ Exhibit 1.

Athens, GA. Similarly, the main studio for each of the three stations – or at least the cluster headquarters – is located in Atlanta, *not* Athens, LaGrange or Gainesville.⁶

Moreover, Cox markets WBTS – *today* – as an Atlanta station, not an Athens station. WBTS uses the slogan “95.5 The Beat of Atlanta. Atlanta’s new #1 hit music station.”⁷ Paid advertisements on WBTS and on the Station’s website for Atlanta dance clubs, job listings, and a dating service for single Atlantans⁸ -- only to name a few – also make clear that higher-paying Atlanta advertisers are WBTS’s focus.⁹ WBTS’s marketing materials for advertisers¹⁰ focus on Atlanta and the five counties that comprise Atlanta and its eastern suburbs, but make no mention of Athens or its home county, Clarke County. Similarly, the calendar of events highlighted on WBTS’s website are mostly targeted to Atlantans -- not Athenians.¹¹ In addition, WBTS is rated as Atlanta station by Arbitron, unlike most other Athens, GA stations, which are unrated.¹²

In fact, WBTS recently may have gone too far in marketing itself as an Atlanta station. As the enclosed CD demonstrates,¹³ WBTS does not appear to identify Athens as the Station’s community of license at the top of the hour, as required by Section 73.1201 of the

⁶ BIAfn Media Access Pro 3.1, information current as of 10/16/2003, (listing 1601 W. Peachtree St NE, Atlanta, GA as the studio address for all five Cox radio stations and WSB-TV).

⁷ See Attachment A.

⁸ Attachment B.

⁹ Attachment C.

¹⁰ *Id.*

¹¹ Attachment D.

¹² See BIAfn Media Access Pro 3.1, information current as of 10/16/2003, (WBTS listing); *compare Id.* (WGAU(AM), WRFC(AM) WXAG(AM) listings).

¹³ See Attachment A.

Commission's rules.¹⁴ Although the Commission's rules allow the Station to identify additional communities, it appears that WBTS identifies only Atlanta and does not identify Athens at all.

II. COX'S PROPOSAL IS AN ATTEMPT TO MOVE WBTS INTO ATLANTA

The Commission must view Cox's proposal to change the Station's community of license in the context of Cox's concentrated, cross-platform Atlanta media holdings and Cox's current positioning of the Station as an Atlanta station. As indicated above, Cox has located the WBTS transmitter site, and marketed and programmed WBTS, to serve Atlanta. These facts, together with Doraville's close proximity to Atlanta as compared to Athens, indicate that the only possible purpose for Cox's proposal to change the Station's city of license is to remove the Station's tether to Athens, some 60 miles east of Atlanta. By selecting Doraville, an Atlanta suburb of 9,862, as the Station's community of license, Cox will eventually be poised to move the Station's transmitter site further west to a place where it can, at last, provide full signal coverage of Atlanta.

The timing of Cox's Petition manifests Cox's fix on Atlanta, not little Doraville. If Cox's true primary purpose for the proposal in the Petition was to provide Doraville with a first local transmission service, Cox could have filed the Petition at any time after Cox acquired the Station in 1999. The Station's operations at its current site meet the community of license coverage requirement for both Athens and Doraville, and the service contour of the Station does not encompass the city of Atlanta, as required by the newspaper/broadcast cross-ownership rule. Yet, Cox chose to wait to file the Petition, and a similar petition that Cox simultaneously filed

¹⁴ 47 C.F.R. § 73.1201.

for its LaGrange, GA station, WALR(FM),¹⁵ until the Spring of this year when the Commission appeared poised to remove or limit the newspaper/broadcast cross-ownership prohibition. If the cross-ownership prohibition were removed, only the requirement to provide community of license coverage to Athens would limit Cox's ability to move WBTS to a place where it would provide signal coverage over all of the city of Atlanta.¹⁶

Finally, Cox indicates in its Petition that its proposal is not premised on a transmitter site change and that it can provide community of license coverage to Doraville from its current transmitter site.¹⁷ However, what Cox fails to mention is that once the Commission removes the Station's tether to Athens and replaces it with a new community of license that is only 15 miles from Atlanta instead of 60 miles, there is no limit on Cox's ability to move WBTS into Atlanta through an application for minor modification of facilities. Even with the Commission's requirement in the NPRM that Cox file applications for construction permit and license specifying its existing transmitter site to implement the change in community to Doraville,¹⁸ there is nothing to prevent Cox from licensing its current site with Doraville as its community of license and then immediately seeking a construction permit for a minor modification to move the Station transmitter site closer into Atlanta. Thus, the facts clearly

¹⁵ *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (LaGrange, Greenville and Waverly Hall, Georgia)*, Notice of Proposed Rulemaking, DA 03-3227 (rel. Oct. 24, 2003). As a result of this move, WALR-FM will provide a city-grade signal to significant portions of western Atlanta. See Joint Petition for Rule Making of Cox Radio, Inc., CXR Holdings, Inc. and Davis Broadcasting Inc., of Columbus, filed in RM-10813 on May 9, 2003 at Exhibit A, Figure 3 at 2.

¹⁶ *Prometheus Radio Project v. FCC*, No. 03-3388 (3d Cir. Sept. 3, 2003) (per curiam) (ordering that the Commission's prior ownership rules remain in effect pending resolution of the proceedings involving the new proposed ownership rules).

¹⁷ Petition at 3.

¹⁸ NPRM at ¶ 5.

demonstrate that Cox's Petition is, in reality, a petition to move the Station into Atlanta, and the Commission should review the Petition on that basis.

In addition, by proposing only the first step of the WBTS move-in to Atlanta in the Petition, and remaining silent as to its intentions for a second-step transmitter site move, Cox has avoided (i) the Commission's rule against creating new short spaced allotments,¹⁹ (ii) the requirement to provide the Commission with a gain/loss showing in its Petition, and (iii) the need for a waiver of the existing newspaper/broadcast ownership rule to accomplish the WBTS move-in. The Commission should require that Cox address all of these relevant issues in this proceeding.

III. COMMISSION POLICIES DISFAVOR MOVE-IN PETITIONS

Cox claims that its proposed amendment to the FM Table of Allotments will provide first local service to Doraville, Georgia, while maintaining local service in Athens, and therefore furthers the public interest. The Commission has repeatedly stated, however, that it will not blindly apply the first local service preference of the FM allotment priorities when a station seeks to reallocate a channel from a rural community to a suburban community of a nearby urban area.²⁰ Indeed, the Commission has acknowledged that an inflexible approach to first local service allotments "without further analysis, could consistently result in [a] finding that a reallocation leading to first local service for a suburb of a much larger adjacent metropolitan center justifies removing a local service from a *more remote* community."²¹

¹⁹ See *id.*

²⁰ *Modification of FM and TV Authorizations to Specify a New Community of License*, Memorandum Opinion and Order, 5 FCC Rcd 7094, 7096 (1990) ("New Community Order").

²¹ *Id.*

Of course, relocating WBTS to a suburb of a larger metropolitan area is precisely what Cox is seeking to do. A comparison of the population densities for Fulton and DeKalb counties (which include the city of Atlanta) and Athens-Clarke County makes this point obvious. According to US Census data for 2000, Athens-Clarke County, Georgia, with a population of 101,489, spans 121 square miles, has less than one tenth of the population of, and is one fifth as densely populated as, Fulton and DeKalb counties.²²

As a result, the Commission has an obligation to ensure that less densely populated areas, such as Athens, are not abandoned for more populous ones²³ -- under the guise of providing a first local service to a location that amounts to nothing more than a suburb of a metropolitan area. Moreover, the Commission's underlying statutory obligation in the area remains unchanged. The Commission is required to "make such distribution of licenses, frequencies, hours of operation and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."²⁴ Nothing in the Commission's action to withdraw the *Berwick* doctrine changed the Commission's underlying allotment obligations.²⁵ Instead, the Commission decision in that case was to institute a new presumption, absent evidence to the contrary, that a petitioner for a new

²² Attachment E.

²³ See *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Sumter, Orangeburg and Columbia, South Carolina)*, Report and Order, 11 FCC Rcd 6376, 6377 ¶ 7 (1996) (stating "we do not believe that a mathematical calculation . . . adequately captures, by itself, the public interest considerations we must take into account. If we were to strictly adhere to such mathematical formulae, we could well find it desirable to remove services from rural areas to more populous areas.").

²⁴ 47 U.S.C. § 307(b).

²⁵ *The Suburban Community Policy, the Berwick Doctrine, and the De Facto Reallocation Policy*, Report and Order, 93 FCC 2d 436, 451 (1983).

allotment intends to serve the community proposed in its petition.²⁶ In this case, however, there is clear evidence to defeat that presumption. WBTS *currently* has little remaining connection with its current community of license and is focused wholeheartedly on Atlanta, and there is nothing in the Petition that indicates that Cox intends to change that focus with a change in community of license to Doraville. Thus, Cox's lack of service to the residents of Athens and its focus on, and dominant media presence in, Atlanta mean that the Commission has no rational basis to presume that Cox intends to serve the needs of Doraville residents.

The "bedrock obligation" of broadcasters is to serve the needs and interests of their community of license.²⁷ As consolidation in the radio and television markets has intensified over the last several years, and as consolidators have built "market clusters" of stations, the Commission has recognized an increased urgency to ensure that stations like WBTS serve the interests of their current communities of license. Indeed, the Commission recently initiated a Localism Task Force, which will explore possible steps that the Commission can take to strengthen localism in broadcasting.²⁸ Additional policies may be required, but the Commission has existing rules and policies that it can enforce to ensure that licensees adhere to the bedrock obligation of localism. In this proceeding, the Commission should enforce its existing rules and policies and treat Cox's move-in proposal for WBTS with the skeptical, realistic inquiry that it deserves.

²⁶ *Id.* at 456.

²⁷ *Deregulation of Radio*, Report and Order, 84 FCC 2d 968, 977, 982 (1981), *on recon.*, 87 FCC 2d 797 (1981), *remanded on other grounds sub nom. Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983). *See also En Banc Programming Inquiry*, 44 FCC 2303, 2312 (1960) ("The principal ingredient of [the public interest] obligation consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area.").

²⁸ *See FCC Chairman Powell Launches "Localism in Broadcasting Initiative,"* Public Notice, rel. Aug. 20, 2003.

The Commission recently took just such a “hard look” at a proposal to reallocate a channel from Chillicothe to Ashville, Ohio.²⁹ Initially, the Commission disregarded the obvious intent behind petitioner’s proposed reallocation. However, the Commission subsequently acknowledged that, if subsequent to the grant of the proposed reallocation, the station applied for a minor modification to move its transmitter site to a location where it could serve more than 50% of the Columbus Urbanized Area – an unstated, but likely second-step in the petitioner’s proposal – “the procedure of first proposing only a change in community of license and subsequently proposing the relocation of the transmitter site would effectively circumvent a specific Commission requirement . . .” in the allocation proceeding.³⁰ Requiring the petitioner in that case make the required showing for its unstated second step would allow the Commission to “address any issue with respect to a two-step procedure to implement a migration of a station from a rural to an urbanized area.”³¹ The Commission should act similarly in this case and require Cox to fully address the second step of its plan to move WBTS into Atlanta. Although Cox did attempt a *Tuck* showing in its Petition, Cox has neither (i) provided the required showing to support a waiver of the newspaper/broadcast cross-ownership rule or (ii) provided the required loss/gain area study.

²⁹ *In the Matter of Amendment of Section 73.202(B), Table of Allotments, FM Broadcast Stations (Chillicothe and Ashville, Ohio)*, Request for Supplemental Information, 18 FCC Rcd 11230 (2003).

³⁰ *Id.* (requiring that the licensee submit a *Tuck* showing).

³¹ *Id.*

IV. DORAVILLE IS NOT ENTITLED TO A FIRST LOCAL SERVICE PREFERENCE

The Commission relies on criteria established in *Tuck* to determine whether a community should be awarded a first local service preference.³² The criteria are as follows: (1) signal population coverage; (2) the size of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city.

Cox's Petition fails to demonstrate that Doraville, which falls wholly within the Atlanta Urbanized Area, is independent from Atlanta. WBTS currently provides city grade service to 33% of the Atlanta Urbanized Area, not an insignificant percentage. As described in the attached Technical Statement demonstrates, however, once Cox relocates its transmitter closer to the central city of Atlanta, it will encompass all of the city of Atlanta with a service contour and will serve nearly 50% of the Atlanta Urbanized Area with city grade service. Moreover, as even Cox must admit, the population of Doraville is a mere 2.36% of the population of the city of Atlanta, and less than 1% of the population of Fulton and DeKalb Counties (.66%), and is essentially contiguous to and is an integral part of Atlanta, less than 15 miles away.³³ With Doraville's close proximity to Atlanta and WBTS's current, Atlanta-focused marketing strategy, there is no doubt that the Petition is designed to further solidify WBTS's place in the Atlanta radio market.

Doraville is not a community for allotment purposes because it is not significantly independent of Atlanta. Notably, Doraville is located in DeKalb County, which itself is

³² *Faye & Richard Tuck, Inc.; KBEC, Waxahachie, Texas; Bluebonnet Radio Broadcasters, Inc., Plano, Texas; Century Broadcasting Corp. Garland, Texas; Dontron, Inc. KPBC, Garland, Texas; For Construction Permit for a New AM Station*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) ("*Tuck*").

³³ <http://www.indo.com/cgi-bin/dist?place1=doraville%2C+ga&place2=atlanta%2C+ga> (13 miles).

integrally identified with Atlanta.³⁴ The county, which borders the city of Atlanta on the east, is ranked second among metropolitan Atlanta's 20 counties in total population and total labor force.³⁵ DeKalb County grew by 12.4 percent in the 1990s and is projected to rise to 13.5 percent in the next decade. Contrary to Cox's attempt to describe Doraville as an independent community that provides its residents an extensive variety of municipal services, Doraville is heavily dependent upon DeKalb County for these services. For example, fire protection services, libraries and schools all are provided by the county. Moreover, Doraville high school residents attend Cross Keys High, which is physically located in Atlanta.

Doraville is economically linked to Atlanta and is part of the Atlanta advertising market. Arbitron, for example, lists all of DeKalb County, including Doraville, as a part of the Atlanta radio market.³⁶ Advertisers simply do not view Doraville as a separate and distinct market as Cox would have the Commission to believe. Furthermore, that Doraville has a *quarterly* community newspaper, a fact cited by Cox in support of its *Tuck* showing,³⁷ clearly demonstrates the opposite point – that Doraville is dependent on Atlanta. That Doraville has newspaper published *four times a year*, which simply cannot address the suburb's need for timely local news and information, underscores Doraville's link to Atlanta, not its supposed

³⁴ Cox filed comments opposing WPEZ(FM)'s petition to reallocate Channel 300C1 from Macon to Hampton, Georgia. While the Commission ultimately granted this petition, it was Cox that argued in that case that Hampton, which is farther from Atlanta (25 miles) than Doraville and, unlike Doraville, is located in a county that does not border the central city of Atlanta, was not significantly independent of Atlanta because it was economically linked to Atlanta through a shared advertising market and dependent upon Henry County for municipal services. Comments of Cox Radio, Inc., filed on Apr. 13, 1998, in MM Docket No. 98-18, RM-9204. Cox's comments in that proceeding seem equally applicable, if not more so, to Doraville in this case.

³⁵ www.dekalbchamber.org/Dcoc.jsp

³⁶ Attachment F.

³⁷ Petition at 12-13.

independence. Instead, most residents of Doraville read the Cox-owned Atlanta Journal and Constitution because they perceive themselves and their community as an integral part of the Atlanta metropolitan area.

U.S. Census Bureau statistics indicate that the mean commute time for Doraville residents is 29 minutes.³⁸ Doraville is only about 3.5 square miles, so a commute time of half an hour strongly suggests that most residents work outside of Doraville. Indeed, Metropolitan Atlanta Rapid Transit Authority (MARTA) has a subway stop with Park and Ride facilities in Doraville that residents use to commute to and from work. MARTA also operates numerous bus routes from Doraville into Atlanta.³⁹

Finally, Doraville does not have its own phone directory. Rather, its listings are included in a directory that covers North Atlanta.⁴⁰ All of these facts taken together demonstrate that Doraville is not significantly independent of Atlanta to justify a first local service priority under the Commission's FM allotment priorities.

V. THE COMMISSION SHOULD REVIEW THE WBTS PETITION UNDER ALLOTMENT PRIORITY 4, OTHER PUBLIC INTEREST MATTERS

As discussed above, Doraville cannot be credited with a first local service under allotment priority 3 because Doraville is dependent on Atlanta for allotment purposes, and because Cox's true aim is to serve Atlanta. Rather, the Commission must attribute Doraville to Atlanta, which is already well served with transmission and reception services. As a result, the Commission must review Cox's proposal under priority 4, other public interest matters. Under allotment priority 4, the Commission considers various factors, including the number of local

³⁸ Attachment G at 3.

³⁹ www.itsmarta.com/getthere/stations/doraville.htm.

⁴⁰ Attachment H.

transmission services in the communities at issue, the relative size of the communities at issue, and the number of reception services in the gain and loss area.⁴¹

At the outset, the Commission should consider the impact of Cox's proposal to reallocate WBTS on Athens, GA. Athens is an important north Georgia city with a population in excess of 100,000. Athens is, of course, the home of the University of Georgia and is an important cultural center. Cox claims that Athens will remain well served by transmission services even if WBTS, one of two commercial FM allotments for Athens, is reallocated to Doraville. However, without WBTS, Athens will retain *only one* commercial FM allotment, three commercial AM stations and three non-commercial FM stations. By contrast, Atlanta alone (without counting allotments and assignments to suburban communities, which would likely double the total) has a total of 23 aural transmission services, comprised of six commercial FM allotments (all Class C or C1), twelve AM stations and five non-commercial FM stations.

The nature of the remaining Athens transmission services further demonstrates that Athens will be underserved if WBTS is reallocated away from Athens. The other commercial FM station licensed to Athens, WFSH-FM, like WBTS, has located its transmitter as far to the west as possible to maximize coverage of Atlanta, markets itself as an Atlanta station and has few ties to the Athens community. Of the three AM stations licensed to Athens, one is a day-time only operation and the other two are Class B and Class C facilities with no more than 5 kW daytime and 2.5 kW nighttime power. Of the non-commercial FM stations licensed to Athens, one is a Class A facility and the other two stations are Class C2 and C3 stations with less than maximum allowable facilities for their class, and all three stations have relatively limited coverage areas. In short, for a city with a population in excess of 100,000, Athens is – today –

⁴¹ *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 n. 8 (1982), recon. denied 56 RR 2d 448 (1984).

remarkably underserved by transmission services and reallocating WBTS to Doraville would obviously only makes matters worse. In contrast, Atlanta and its surrounding suburbs enjoy a wealth of transmission services and are hardly in need of another Class C1 allotment.

As indicated above, Cox has not provided the gain/loss study to support the WBTS move into Atlanta. The attached Technical Statement includes a gain/loss study based on a hypothetical transmitter site further to the west of the existing WBTS site. The hypothetical site provides full service-contour coverage to the city Atlanta, which, as discussed above, appears to be Cox's design. As the study demonstrates, relocating the WBTS transmitter closer to Atlanta will result in loss of reception service to communities to the east and north of Athens. These rural communities, including communities in Madison, Oglethorpe and Franklin Counties, are currently served by as few as 8 aural services. In comparison, Atlanta and the other communities in the gain area are already well served by reception services. These gain area communities are already served by as many as 44 services.

In short, the other public interest factors that the Commission considers under allotment priority 4 weigh overwhelmingly in favor of dismissing Cox's proposal for WBTS and retaining the existing allotments for Athens, GA. Reallocating WBTS away from Athens to the Atlanta suburbs would leave the important city of Athens further underserved by transmission services, while adding to an embarrassment of riches in and around Atlanta. Moreover, the reallocation of WBTS to the Atlanta suburbs would also allow Cox to move WBTS into Atlanta, which would result in significant loss area and a reduction in reception service to rural communities that are already underserved.

VI. IF THE COMMISSION GRANTS COX'S PETITION, THE COMMISSION SHOULD CONDITION THE WBTS LICENSE ON PROVIDING A CITY GRADE SIGNAL TO ATHENS

Cox states repeatedly throughout its Petition that the proposed change in community to Doraville will be made at the existing WBTS transmitter site.⁴² However, nowhere in the Petition does the Cox commit to limit the WBTS transmitter site to its current coordinates in the future, or to continue to provide Athens with a city grade signal.⁴³ If WBTS were to relocate its transmitter closer to Atlanta, the relocation undoubtedly will result in loss of service to some communities. As the Commission has explained in the past, "the public has a legitimate expectation that existing service will continue."⁴⁴ Accordingly, the Commission will weigh this expectation "independently against the service benefits that may result from allotting a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service or both."⁴⁵

Consistent with the Commission's prior pronouncements regarding the public's expectation of continued service, the Commission recently took steps to ensure that residents in a station's former community of license continued to receive service following the change in the community of license. Specifically, the Commission granted WHNS(TV) approval to change its community of license from Asheville, North Carolina, to Greenville, South Carolina, subject to the condition that the station continue to provide city grade coverage to Asheville, the station's

⁴² Petition at 3, 5, 6, 14, Exhibit A at 2.

⁴³ The NPRM does provides that Cox must "specify its current licensed site for Station WBTS, Athens, Georgia, for the applications for a construction permit and a license for Station WBTS, Doraville, Georgia," NPRM at ¶ 5, but the NPRM condition would not impose any further condition on the future transmitter location or operations of WBTS.

⁴⁴ *In the Matter of Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, 4873 (1989) recon. granted in part, 5 FCC Rcd 7094, 7097 ¶ 19 (1990).

⁴⁵ *Id.*

original community of license.⁴⁶ The Commission also imposed a second condition requiring that the station “continue service to Asheville and its environs by way of local news and other public affairs programming.”

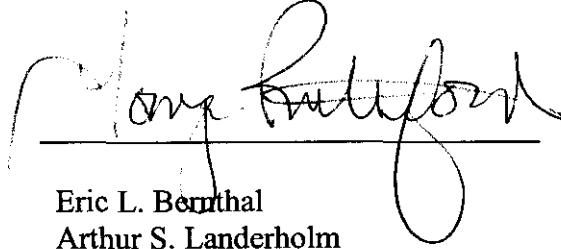
If, despite the fact and arguments set forth in these Comments, the Commission decides to grant Cox’s proposal to reallocate WBTS to Doraville, then the Commission should condition WBTS’s license, as the Commission did in the WHNS case, on WBTS continuing to provide city grade coverage to the community of Athens and on the WBTS programming continuing to meet the needs and interests of Athens residents. Such a condition will ensure that the needs of the Athens residents continue to be met in the future, and if Cox’s true intention is to serve Doraville from its current transmitter site, and not to move WBTS into Atlanta, then those additional conditions on the WBTS license will have no adverse impact on Cox’s operation of WBTS in the future.

VII. CONCLUSION

As set forth in more detail above, the Commission should reject the Cox proposal to change the community of license for WBTS from Athens, Georgia, to Doraville, Georgia. In the alternative, the Commission should condition the grant of Cox’s Petition on WBTS continuing to provide a city grade signal to the community of Athens, GA.

⁴⁶ *In the Matter of Amendment of Sections 73.606(b), Table of Allotments, Television Broadcast Stations; and 73.622(b), Table of Allotments, Digital Broadcast Television Stations (Asheville, North Carolina and Greenville, South Carolina), Report and Order, DA 03-2479 (rel. Aug. 1, 2003).*

Respectfully submitted,
Infinity Broadcasting Corporation

A handwritten signature in cursive script, appearing to read "Tonya Rutherford", is written over a horizontal line.

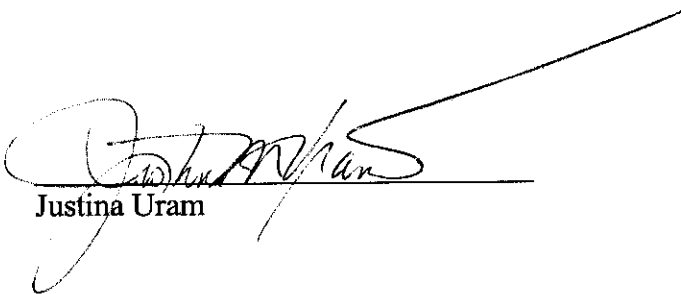
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October 27, 2003

CERTIFICATE OF SERVICE

I, Justina Uram, hereby certify that on this 27th day of October 2003, I caused copies of the foregoing Comments of Infinity Broadcasting Corporation to be sent via first class mail, postage prepaid to the following:

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EXHIBIT 1